

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT A. DAY, # 446361,

Plaintiff,

Case No. 10-cv-14169

v.

HONORABLE STEPHEN J. MURPHY , III

GENESEE COUNTY, et.al.,

Defendants.

ORDER DENYING MOTION TO APPEAL (docket no. 8)
AND MOTION TO EXTEND TIME TO AMEND COMPLAINT (docket no. 9)

On November 18, 2010, the Court summarily dismissed Plaintiff's complaint pursuant to the screening provisions of the Prison Litigation Reform Act of 1996. Plaintiff subsequently filed a "motion to appeal," and a "motion to extend" the time to file an amended complaint. Both motions will be denied. A party need not obtain leave of the district court in order to appeal the court's summary dismissal of a complaint, so ruling on Plaintiff's motion to appeal would make no difference to the Plaintiff's legal interests.¹ The motion to extend the time to file an amended complaint is denied because the Court has already dismissed the complaint and entered a final judgment. Even had Plaintiff filed the motion prior to dismissal of the complaint, the Court could not grant the motion. See *McGore v. Wigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997) ("Under the Prison Litigation Act, courts have no discretion in permitting a plaintiff to amend a complaint to avoid a sua sponte dismissal.").

¹ Rule 3 of the Federal Rules of Appellate Procedure governs the procedure by which a party perfects an appeal as of right.

WHEREFORE, it is hereby **ORDERED** that Plaintiff's motion to appeal (docket no. 8), and motion to extend the time to file an amended complaint (docket no. 9) are **DENIED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: December 7, 2010

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 7, 2010, by electronic and/or ordinary mail.

s/Alissa Greer
Case Manager